

**REPORT - PLANNING COMMISSION MEETING**  
**November 18, 2004**

**Project Name and Number:** Niles Canyon Road Protection Plan (PLN2002-00175)

**Applicant:** City of Fremont in conjunction with the City of Union City and Alameda County

**Proposal:** To consider a Protection Plan for the Niles Canyon Road area (a requirement for designation as a State Scenic Highway).

**Recommended Action:** Recommend to City Council adoption of the Niles Canyon Road Protection Plan.

**Location:** Niles Canyon Road (portion of Route 84) from Mission Boulevard to Interstate 680

**Agent of Applicant:** Lisa Asche, Planner with Alameda County

**Consultant(s):** Jay Claiborne, Consultant

**Environmental Review:** This project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) under Section 15307 and 15308 in that this project has been authorized by state law to assure maintenance, restoration, or enhancement of a natural resource and of the environment by establishing procedures for protection.

**Existing General Plan:** Land use designations are listed in order of occurrence beginning from Mission Boulevard to the City limit line: Gateway Designation, Historic Resource, Institutional Open Space, Park, Trailhead (Vallejo Mills) Neighborhood Commercial, Medium Density Residential (6.5-10 du/acre), Low Density Residential (5-7 du/acre), Hill Face Open Space, Open Space, Trailhead, Historic Resource (Mission Clay) and Gateway Designation.

**Existing Zoning:** Zoning designations are listed in order of occurrence beginning from Mission Boulevard to the City limit line: O-S, Institutional Open Space; P-2001-9(H), Planned District for former Big Daddy's site; R-1-8(H-I), Single Family Residential(Hillside Combining), O-S(F), Open Space(Flood Combining), O-S(R), Hill Face Open Space (Development Reserve Overlay) and O-S (Open Space).

**Existing Land Use:** Vallejo Mills Historical Park, vacant commercial site, single family homes, vacant open land, Alameda Creek and the site of former Mission Clay facility.

**Public Notification:** A notice was mailed to owners and occupants of property along Niles Canyon Road within Fremont's jurisdiction. The notices to owners and occupants were mailed on November 5, 2004. A Public Notice was delivered to The Argus on November 1, 2004 to be published by November 4, 2004.

**Executive Summary:** Approval of a Protection Plan for the Niles Canyon corridor is the final step of the Scenic Highway designation process. The proposed Protection Plan is in essence a compilation of existing rules and regulations of the various jurisdictions along the corridor. The Protection Plan does, however, also include some ideas for implementation (formation of a three-member advisory committee (a Planning Commissioner from each jurisdiction - Fremont, Union City and Alameda County) to review applications for development along the corridor and make recommendations to the appropriate decision making body. Once the Protection Plan is adopted by the three jurisdictions, it will be submitted to the State Department of Transportation Advisory Committee for review, consultation with staff and final approval as a State Scenic Route. The State Scenic Route status results in the installation of State poppy signs along the route.

**Background and Previous Actions:** In 1989, Assemblywoman Delaine Eastin introduced AB 815, which designated State Route SR-84 from SR-238 (Mission Boulevard) in the City of Fremont to Interstate 680 near the Town of Sunol (commonly known as Niles Canyon Road and Paloma Road). In 1991, the Alameda County Board of Supervisors and the Cities of Fremont and Union City adopted "Resolutions of Intent" to initiate a process to designate these roadways as a State Scenic Highway. These "Resolutions of Intent" were updated in 2002 at the request of CalTrans to reaffirm the jurisdictional support in the State Scenic Highway Designation Process when the application was submitted to CalTrans for consideration.

The State Scenic Highway designation application for the Niles Canyon and Paloma Road corridor was submitted to CalTrans on May 8, 2002 for their review and was approved by the Department of Transportation Advisory Committee (DTAC) on December 18, 2003, thereby directing the County of Alameda to continue the designation process by preparing the Protection Plan. Since that time, County staff and the consultant, Jay Claiborne, worked with the City of Fremont and the City of Union City, East Bay Regional Parks District (EBRPD), San Francisco Water District (SFWD) and the Pacific Locomotive Association (PLA) to gather information, ordinances, policies, programs and initiatives that will be compiled into the Protection Plan.

The protection program, as mandated by Section 261 of the California Streets and Highway Code, includes adopted ordinances from each jurisdiction addressing the types and extent of land uses that protect and retain the scenic quality of the designated area, including, but not limited to, the following:

- 1) Regulation of land use and intensity (density) of development;
- 2) Detailed land and site planning processes;
- 3) Prohibition of offsite outdoor advertising and control of onsite outdoor advertising;
- 4) Careful attention to and control of earthmoving and landscaping; and
- 5) Design and appearance of structures and equipment.

Because the Niles Canyon has the added uniqueness of being a recreational destination, as well as holding some of the richest historical resources, the Protection Plan addresses these items as well.

## **OVERVIEW OF EXISTING AND PENDING PROTECTION MEASURES**

### Alameda County

At the time of this writing, the County of Alameda is preparing three general plan elements: (1) the *Resource Conservation Element*, (2) the *Open Space Element* and (3) the *Agricultural Element*. Together they are referred to as the ROSA project, an acronym for R(esource), O(pen) S(pace) and A(griculture). The ROSA project document updates and revises the existing Open Space and Conservation Element. This document also incorporates and updates the 1977 Specific Plan for Areas of Environmental Significance, the 1966 Scenic Route Element and the 1968 Recreation Plan. It will provide the policy direction and program development for the use and management of all the County's rural unincorporated lands. The ROSA project is tentatively scheduled for adoption by the Board of Supervisors at the end of the 2004/05 fiscal year.

The *Resource Conservation Element* and the *Open Space Element* are mandatory under state law. The Resource Conservation Element addresses the identification, conservation and development and use of natural resources including water, soils, waterways, wildlife, and mineral deposits. The Open Space Element provides the County's plan for the "comprehensive and long-range preservation and conservation of open-space land" in order to facilitate the preservation of natural resources, manage the production of resources such as hard rock quarries, and provide for outdoor recreation and public health and safety. The Open Space Element includes a local program establishing criteria for scenic route designation, development of new policies and implementation programs and development standards. For the first time in Alameda County, an *Agriculture Element* has been prepared to support and enhance agriculture by assisting farmers and ranchers with land use programs and incentives.

Additionally, the ROSA policies must be consistent with the Measure D Initiative adopted in November 2000. This means that there will be no intensification of land uses or introduction of new uses that are not consistent with Measure D. Relevant Measure D policies will be incorporated into the ROSA document as well as any policies and land uses defined for the unincorporated Alameda County in the Protection Plan for the Niles Canyon Scenic Corridor.

#### City of Fremont

In the City of Fremont, Measure T, the Hill Area Initiative, was approved by voters in November 2002. Measure T modified the 1981 Hillside Initiative that had governed development in Fremont's hill area for over twenty years in that it redefined the "Toe of the Hill" as:

"A line along the base of the hills, where the natural grade first becomes twenty percent (20%) or more, on the western side of the Hill Area from the Fremont-Union City boundary to the Alameda-Santa Clara County boundary, and on both sides of Niles Canyon and Route 680 east of Mission Boulevard to the Fremont city limits."

The 2002 initiative subjects most properties above the Toe of the Hill line to rezoning, as well as development regulations such as minimum parcel size and limits on development in order to protect the hills. The intent of the initiative and implementing ordinances is "to protect the hills of Fremont from harmful and unnecessary development". The initiative maintains existing use of the hills for agriculture, outdoor recreation, very low-density residential and open space. Its goal is to "protect natural resources, watersheds and water quality, wildlife habitat, beauty and tranquility, and scenic hill views, while permitting access to nature and outdoor recreation for the residents of Fremont". It is designed "to prevent urban-type sprawl to steep and frequently unstable terrain, thereby avoiding high costs to taxpayers for public facilities and services, as well as loss to the environment". The initiative and implementing ordinances are intended to limit traffic congestion and air and water pollution. By providing a balance between urban development and rural, natural qualities, the initiative helps preserve the special character and identity of Fremont and the high quality of life in the City. (See Appendix A for Measure T)

#### City of Union City

The City of Union City's *Hillside Area Plan*, approved in November 1989 by City Initiative Measure II, requires that a detailed specific plan be prepared for all new development proposals within this area using the 53 policies as a guide. (Appendix B *Union City- Hillside Area Plan* was not included as an attachment but is available for review).

#### San Francisco Water Department / Public Utilities Commission

In 2000, the San Francisco Public Utilities Commission (SFPUC) adopted the Alameda Watershed Management Plan which sets forth the guidelines, practices, and overarching policy for the long term care of the Alameda Creek watershed. An important policy of the Plan is to develop a comprehensive Habitat Conservation Plan (HCP) for the watershed that will authorize take of covered fauna and flora species under the jurisdiction of the California Department of Fish and Game (CDFG) and the U.S. Fish and Wildlife Service (USFWS) for all development activities within the Plan. This will enable the SFPUC to balance habitat protection and enhancement with performing the necessary maintenance and operations activities necessary to run a watershed for numerous users. The HCP will address minimizing potential impacts associated with ongoing operations and maintenance activities as well as present acceptable mitigation measures for areas where potential environmental impacts may be present.

The SFPUC has developed a draft mission statement for inclusion in all HCP's - including the Alameda Creek through the corridor beginning at the City of Union City boundary easterly towards I-680. The Conservation Plan will be federally regulated and will address all environmental issues related to watershed habitat.

"The SFPUC will conserve and enhance native species, habitats, and ecosystems on all SFPUC lands. The primary purpose of the HCP is to help protect and enhance these ecological resources while:

- Implementing the SFPUC's Alameda Watershed Management Plan and other relevant plans and policies adopted by the SFPUC;
- Maintaining the quality and reliability of the water supply;
- Balancing the uses of the SFPUC watershed lands with the need of species and ecosystems;

- Obtaining necessary permits from relevant State and Federal agencies primarily for operations and maintenance activities that affect sensitive resources; and
- Serving the public by reducing the costs of complying with environmental regulations.

One of the benefits of the HCP process is increased communication with the stakeholders in general, and the environmental community in particular. As each of the Operations, Maintenance and Capital Improvements projects move towards implementation, the public will be involved with the environmental review process through the public meetings process.

#### Plan Strategy

The Protection Plan consists of a compilation of existing ordinances, policies and legislation from each of the jurisdictions involved in regulating land use within the Niles Canyon Corridor as well as other jurisdictions who are peripherally involved such as the San Francisco Water District, East Bay Regional Park District and CalTrans. Because the Niles Canyon Corridor is a multi-jurisdictional roadway, coordination at the local level is necessary so information can be shared between each agency to assure a comprehensive and implementable Protection Plan as well as to provide consistent support for the existing Hillside Area Plan of the City of Union City, the Hill Area Initiative (Measure T) of City of Fremont and Measure D of the County of Alameda. Designation of the Scenic Route will provide the poppy signs along Niles Canyon Road and Paloma Way but it could also allow coordination of local events such as walk or bike-a-thons through the entire canyon. The following proposed policy defines how this type of coordination could occur.

#### Implementation Strategy

The County of Alameda, City of Fremont and City of Union City shall explore the development of a subcommittee that will oversee all private or public development applications within the corridor delineations. Generally, this subcommittee shall be comprised of one Planning Commissioner from each jurisdiction and shall be appointed by the Board of Supervisor or City Council representing that district/jurisdiction. Their role will be as an advisory or recommendation only body that will review all land use applications within the corridor that may negatively impact the visual quality of the corridor.

#### Summary

In general, the three jurisdictions that regulate land use development within the Niles Canyon Scenic Corridor have adopted General Plan policies and ordinances that recognize the unique character and importance of the scenic quality of the area and protect it from development that compromises its visual, historical and cultural integrity. The fact that Niles Canyon is recognized as a recreational destination and that much of the local economy is dependent upon maintaining this character is important to understanding the background for many of the land use and design policies and actions that are currently adopted by the planning departments of Alameda County and the Cities of Fremont and Union City.

**General Plan Conformance:** The General Plan contains several policies within the Land Use, Open Space and Natural Resource Elements that are applicable to the protection of land with the Niles Canyon Road corridor. These policies have been attached as an enclosure. In addition, the City has adopted an additional "Gateway Designation" at the intersection of Mission Boulevard and Niles Canyon Road, while retaining the Gateway Designation at the City limit line.

**Zoning Regulations:** Applicable zoning regulations include the Floodway, Development Reserve Overlay and Hillside Combining District regulations as well as the base zoning requirements and Measure T requirements listed in the Protection Plan.

**Response from Agencies and Organizations:** The City of Union City and Alameda County Planning Commissions and their respective City Council or Board of Supervisors will also be considering this proposal at their own public meetings.

**Community Involvement:** Most recently (October 28, 2004) the County hosted a meeting in Sunol to discuss the Protection Plan. The meeting primarily clarified the intent of the Protection Plan and answered questions. Some residents expressed concern over the number and size of trucks traversing the canyon route and the possible avoidance of CalTrans weigh station on I-680. In addition, residents expressed concern over the abundance of campaign signs. County staff has advised that they will be investigating truck traffic issues with CalTrans and may consider a proposal for campaign signs within their jurisdiction.

**Environmental Review:** This project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) under Section 15307 and 15308 in that this project has been authorized by state law to assure maintenance, restoration, or enhancement of a natural resource and of the environment by establishing procedures for protection.

**Enclosures:** Vicinity map  
Topographic map  
Fremont City Council Resolution of Intent  
General Plan Policy Framework for Niles Canyon Road  
Draft Protection Plan for Niles Canyon Road (with Appendix A [Measure T])

**Exhibits:** Exhibit "A" Draft Protection Plan for Niles Canyon Road with Appendix A [Fremont's Hill Area Initiative -Measure T]. Appendix B [Union City Hill Area Plan is available for review upon request].

**Recommended Actions:**

1. Hold public hearing
2. Recommend that the City Council find that the proposed project is exempt under Section 15307 and 15308 of the California Environmental Quality Act (CEQA).
3. Recommend that the City Council adopt a resolution approving the Protection Plan for Niles Canyon Road (Exhibit "A").